IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9052 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SOMABHAI SATHARBHAI BAMANIA

Versus

DESK OFFICER

Appearance:

MR YV SHAH for Petitioner

MR MUKESH R SHAH for Respondent No. 1

MR DK NAKRANI for Respondent No. 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 29/06/2000

ORAL JUDGEMENT

The petitioner was working as casual labour in Western Railway and he was orally retrenched from service in 1979. The retrenched workman Shri. Somabhai

Sathrabhai Bamania raised an industrial dispute by way of filing application dated 18-1-1999 before the Conciliation Officer, i.e. the Assistant Labour Commissioner, Baroda. In the conciliation proceedings both the parties appeared. The retrenched workman raised the dispute regarding his illegal discontinuance of service from 20-3-1979. During the conciliation proceedings, the petitioner workman by way of rejoinder raised a plea that after his retrenchment on 20-3-1979 the respondent Railway administration engaged casual labours and he has not been given any intimation regarding engagement of new casual labours. The matter was opposed by the respondent Railway authority and no settlement was reached between the parties. Accordingly the matter was referred to the Central Government. The Central Government, after considering the report and considering the case has refused to refer the dispute to the Industrial Court. The decision of the Central Government was communicated by a letter dated 13-9-1999 (Annexure-B). Petitioner has challenged the decision of the Central Government as communicated by its letter dated 13-9-1999.

2. It is submitted by Mr. Y.V. Shah, learned counsel appearing on behalf of the petitioner that the Central Government has mechanically refused to refer the dispute to the Labour Court and no reasons have been given in the order of the Central Government for refusing reference to the Labour Court. Learned counsel submitted that the Central Government has refused to refer the dispute to the Labour Court on the ground that the claim of the petitioner is time barred and the claimant is not covered under the provisions of the I.D. act 1947. Learned counsel for the petitioner submitted that the petitioner has retrenched the casual labour working under the Railway authority of Western Railway and therefore it cannot be said that he is not covered by the provisions of the Industrial Disputes Act. Learned counsel further submitted that the Law of Limitation do not apply in case of industrial disputes and therefore, the Central Government has erroneously came to the conclusion that the claim of the petitioner was time barred. Learned counsel draws my attention to the case laws reported in AIR 1999 S.C. 1351 and reported in 1999 (2) LLJ, 482. Referring the aforesaid cases learned counsel submitted that the Apex Court has held that the provisions of Article 137 and the Schedule to Limitation Act 1963 are not applicable to the proceedings under the Industrial Disputes Act, and that the relief under it cannot be denied to the workman merely on the ground of delay. Learned counsel accordingly submitted that the petitioner

came to know in the year 1999 that the Railway authority has engaged some casual labours in year 1985 and therefore he has raised the claim that he is entitled to be engaged in accordance with the provisions of Section 25-H of the I.D. Act. Learned counsel further submitted that when this dispute is raised, Central Government should have refered it to the Labour Court for a decision. Learned counsel for the petitioner has also argued that, it is obligatory on the part of the Railway administration to inform the retrenched workman before any new person is engaged in his place. In the present case learned counsel submitted that the Railway administration did not inform the petitioner about engagement of new casual labours in 1985. Consequently learned counsel submitted that, since junior persons have been engaged as casual labours, petitioner is entitled to be engaged with effect from the date his juniors have been engaged as casual labours. Learned counsel accordingly submitted that the Central Government should not have considered the question of delay, and thereby the Central Government has committed an error and refused to refer the dispute to the Labour Court. Learned counsel further submitted that the Central Government has taken a wrong decision, and therefore, the decision of the Central Government communicated by its letter dated 13-9-1999 (Annexure B) is required to be quashed and the Central Government be directed to refer the issue to the Industrial Court.

3. Mr. D.K. Nakrani, learned counsel appearing for Railway administration has submitted that the petitioner was retrenched in March 1979, and after that many persons have been engaged as casual labours by the Railway administration. The petitioner did not raise his claim for all these 20 years, and after lapse of 20 years he is now moving the authority for referring his dispute alleging that, he is entitled to be engaged in accordance with the provisions of Section 25-H of the Industrial Disputes Act. It appears from the letter of the Assistant Labour Commission (Central) Baroda (Annexure-A) dated 30-7-1999 that originally petitioner challenged his illegal discontinuance from 20-3-1979 and this matter was taken up for conciliation. However, during the proceedings before the Conciliation Officer, the petitioner raised new claim that his juniors have been engaged in his place and therefore he is entitled to be appointed. Learned counsel for the respondent also submitted that, during this long 20 years many persons have been engaged as casual labourers and they have acquired a right to their post and if any relief is given to the petitioner at such a belated stage, then such

relief cannot be granted without affecting the interest of the existing casual labourers who are continuing in service for a long period. There is sufficient force in the submission of learned counsel for the respondent. It is true that there is an inordinate delay in raising the present dispute. The petitioner workman was retrenched on 20-3-1979 and he challenged his termination by an application dated 18-1-1999, that is after about 20 years of termination of his service. Further the petitioner initially did not raise any dispute regarding engagement of several casual labours by the respondent. This plea was taken by the petitioner for the first time before the Conciliation Officer when the conciliation proceeding was going on about the dispute of his alleged illegal termination. Simple delay in raising the claim for a reference to the Labour Court may not be a sufficient ground for refusing to make reference, but here in the present case it is an admitted fact that from 1979 to 1999 large number of casual labours have been engaged by the respondent Railway administration. All these casual labours by their long service have acquired a right. Because of the delay of twenty years certain rights have been accrued to the newly engaged casual labours who have been appointed during these long period. Rights have been accrued to many persons engaged during the period of last twenty years. Therefore, I am of the view that the relief sought by the petitioner cannot be granted without causing serious prejudice to the existing casual labours. Having regard to the facts & circumstances of the case stated herein above, I am of the view that the Central Government has rightly considered all these points that if at this belated stage the reference is made then these complications will arise and therefore I am of the view that the Central Government has correctly refused to refer the dispute to the Labour Court. Accordingly I am of the view that there is no merit in the present petition and accordingly this petition is dismissed. Rule discharged. I make no order as to costs.

Dt: 29-6-2000

(P.K. Sarkar, J)

/vgn.